

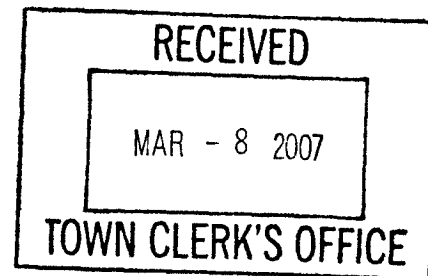
TOWN OF NEW WINDSOR

ZONING BOARD OF APPEALS

Regular Session

Date: MARCH 12, 2007

AGENDA



7:30 p.m. – Roll Call

PRELIMINARY MEETINGS:

1. **PAUL DEARNALEY (07-06)** Request for 14 ft. Front Yard Setback for proposed replacement of attached garage at 549 Shore Drive in an R-4 Zone **(62-9-19)**
2. **THOMAS RETCHO & TERRANCE RETCHO (07-07)** Request for :

2 ft. Building Height for Proposed 8 ft. fence.
Interpretation for the storage, parking and use of a trailer **(57-1-113.1)**
Interpretation for the storage, parking and use of a trailer **(57-1-113.2)**

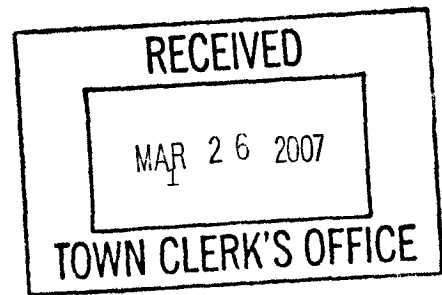
All at 42 & 40 Lakeside Drive in an R-4 Zone.
3. **NEWBURGH LODGE OF ELKS #241 (KIRK WILLIAMS) (For Tavares)** Request for use variance for Fraternal Club/Organization not permitted in R-5 Zone at 286 Temple Hill Road **(79-1-1)**

PUBLIC HEARINGS:

4. **YURY MATSUKA (07-01)** Request for 10 ft. Rear Yard Setback for proposed 12' X 17' rear deck at 2648 Liberty Ridge (The Reserve) in an R-3 Zone **(77-1-6)**

(NEXT MEETING MARCH 26, 2007)

March 12, 2007



TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS

MARCH 12, 2007

MEMBERS PRESENT: KIMBERLY GANN, ACTING CHAIRMAN
KATHLEEN LOCEY
ERIC LUNDSTROM
PAT TORPEY

ALSO PRESENT: ANDREW KRIEGER, ESQ.
ZONING BOARD ATTORNEY

MYRA MASON
ZONING BOARD SECRETARY

ABSENT: MICHAEL KANE, CHAIRMAN

MICHAEL BABCOCK
BUILDING INSPECTOR

REGULAR MEETING

MS. GANN: I'd like to call to order the March 12, 2007 meeting of the New Windsor Zoning Board of Appeals. We're going to have two sets of meetings this evening, we're going to have three preliminary meetings, we'll also have one public hearing and I will ask that each individual after I call your name, you come on up and you let Fran know who you are, why you're here and your name and address obviously. And for the folks that are here for the preliminary hearing, you'll be coming back for a second meeting for a public hearing so whoever's

March 12, 2007

2

here for the public hearing tonight this will be it for you. So without further ado, I'd like to call the first order of business.

PRELIMINARY_MEETINGS:

PAUL_DEARNALEY_(07-06)

MS. GANN: Request for 14 ft. front yard setback for proposed replacement of single family house with attached garage at 549 Shore Drive.

MR. DEARNALEY: Paul Dearnaley, 549 Shore Drive, New Windsor, 12553.

MS. GANN: Tell us why you're here, Paul.

MR. DEARNALEY: I'm asking for permission to extend proposed carport on the building that I have from 10 feet to 24 feet, that's the plan, it shows the garage but I amended it to be a carport instead.

MS. GANN: Why are you looking to do that just for the record?

MR. DEARNALEY: It will provide better parking, covered parking and it will leave me with a 31 foot setback instead of 45.

MS. GANN: So how many additional parking spots will be now added to this?

MR. DEARNALEY: Just to get more length in order to fit the house on the property it was going to be rather narrow that's under construction now.

MS. GANN: What was there prior to you putting the driveway in here?

MR. DEARNALEY: Nothing.

MS. GANN: What's this wall here?

MR. DEARNALEY: That's the front of the house.

MS. GANN: So this is not the front of your house then?

MR. DEARNALEY: The blue one, no, this is the front of my house, this will be an extension out. The other one's, pretty sure it's up close right there like that picture shows.

MS. GANN: Will you be taking any substantial vegetation in the building of this?

MR. DEARNALEY: No, there's nothing there.

MS. GANN: Will it be causing any water hazards once this is built?

MR. DEARNALEY: No.

MR. KRIEGER: Won't be built on top of any easements?

MR. DEARNALEY: No.

MR. KRIEGER: Or close to any easements?

MR. DEARNALEY: I don't believe this plan shows any easements going through the property, I've got a sewer easement in the back.

MR. KRIEGER: But nothing close to where you're putting this?

MR. DEARNALEY: No.

MS. GANN: Any further questions from the board?

MS. LOCEY: The agenda indicates the replacement of a single family house.

MR. DEARNALEY: Yes, we lost it in a fire February 1, '06, it burnt to the ground.

MS. LOCEY: So you're replacing it plus putting a proposed garage on it?

MR. EARNALEY: Well, we initially started with a garage but it's going to be a carport but basically it's the same footprint.

MS. GANN: Anything else?

MR. KRIEGER: How is it, is it closer to the road than your neighbors or far away or do you have any neighbors?

MS. GANN: This is the neighbor right here in this house?

MR. DEARNALEY: Yes, but they're setback so far they're well over the 45 foot setback that the proposed right here meets, they're way back in here somewhere, they go to the lake more.

MS. GANN: I don't have any further questions. Does the board? Eric?

MR. LUNDSTROM: One of the questions I'm not sure if counsel got a proper answer to it, are there any other dwellings in that area in that vicinity that are that close to the road?

MR. DEARNALEY: Yes, one down the road two homes over.

MR. LUNDSTROM: Towards 94?

MR. DEARNALEY: Yes, toward Cumberland Farms. I'm 549, there's Lois and then there's Rick, they're close to the road.

MR. LUNDSTROM: They're closer to the road than yours would be?

MR. DEARNALEY: No, about equal which in my proposal they're down here.

MR. LUNDSTROM: One of the questions that I know will come up in the public hearing is are there any properties that are closer than that?

MR. DEARNALEY: Closer?

MR. LUNDSTROM: Yes. You don't have to answer that now, just one of the questions that will come up in the public hearing.

MR. DEARNALEY: It's close, I don't know how close.

MR. LUNDSTROM: You may want to measure for the public hearing.

MR. DEARNALEY: Just show an example of something existing?

MR. LUNDSTROM: Yes.

MR. DEARNALEY: My old garage was removed.

MR. LUNDSTROM: With the fire?

MR. DEARNALEY: Yeah, it got destroyed too much to use.

MR. LUNDSTROM: But now your old garage was back further?

MR. DEARNALEY: Yes.

MR. LUNDSTROM: Now you're asking for 31 foot?

MR. DEARNALEY: Right, this is the carport instead of a garage.

MR. LUNDSTROM: The question will come before the board is are we setting a precedent?

MR. DEARNALEY: Oh, well want me to take pictures?

MR. LUNDSTROM: Just a statement or measurement that you're not closer to the road than other people are.

MR. DEARNALEY: Okay.

MR. LUNDSTROM: And some examples.

MR. DEARNALEY: Well, only one that I know of is the neighbor down the street.

MS. GANN: How long ago was the house burnt down?

MR. DEARNALEY: February 1, '06.

MS. GANN: Did you live in the house prior to that? So you lived there for how many years?

MR. DEARNALEY: I bought the house in July of 2000.

MS. GANN: So your driveway was where compared to where?

MR. DEARNALEY: Same.

MS. GANN: In the same place?

MR. DEARNALEY: Maybe shifted over a little bit.

MS. GANN: When was the house built, do you know?

MR. DEARNALEY: 1944.

MS. GANN: So there has been a driveway since 1944?

MR. DEARNALEY: Oh, yeah, I've got pictures of the

original property but it shows a little bungalow we started with.

MS. GANN: All right.

MR. LUNDSTROM: Now, when you build this garage will the driveway be moved?

MR. DEARNALEY: It could shift, I mean depending, it's really just shale, just dirt and stone, it's really not depending on what the trucks do with the concrete, it's not a driveway anymore.

MR. LUNDSTROM: Are you looking to put a paved driveway?

MR. DEARNALEY: No.

MR. LUNDSTROM: Just be shale?

MR. DEARNALEY: Yeah, cause it will drain, again, it's a carport, I don't know if that makes a difference or initially it was going to be a garage but we're going to do a carport instead.

MS. GANN: If there's no additional questions, I'll accept a motion.

MS. LOCEY: I will offer a motion to schedule a public hearing on the application of Paul Dearnaley and his request for a 14 foot front yard setback for proposed replacement of a single family house with an attached carport at 549 Shore Drive in an R-4 zone.

MR. TORPEY: I'll second that.

ROLL CALL

MR. LUNDSTROM	AYE
MS. LOCEY	AYE

March 12, 2007

9

MR. TORPEY AYE
MS. GANN AYE

MS. MASON: Just read that over, tells you what to do
next, take it with you.

THOMAS_RETCHO_&_TERRANCE_RETCHO_(07-07)

Mr. Thomas Retcho and Mr. Terrance Retcho appeared before the board for this proposal.

MS. GANN: Good evening, how are you? Tell us why you're here this evening.

MR. TH. RETCHO: We're seeking a variance for a fence along the property line on my property at 42 Lakeside Drive and also a variance for parking of a couple pieces of commercial equipment I use for self-employed business and as well as on my father's, his property abuts my driveway.

MS. GANN: Just curious why you're looking to put up a fence?

MR. TH. RETCHO: Well, there's an issue with the neighbor who doesn't want the stuff on the property, he doesn't want to look at the stuff.

MS. GANN: Stuff meaning?

MR. TH. RETCHO: The trailers for the business in an effort to screen that as a screening purpose only the issue for the fence is what I'm requesting so the variance would be to have a fence high enough so it's, so it acts as a screen.

MS. GANN: What sort of fence would this be, is it wood?

MR. TH. RETCHO: Wood, stockade, the tight wood fence.

MS. GANN: The type you can't see through?

MR. TH. RETCHO: Yes.

MR. LUNDSTROM: Eight foot high fence?

MR. TH. RETCHO: Well, I felt that eight foot would be adequate because of the grade various, the property sits up a little higher than the neighbor's viewpoint so going high enough to allow so that it would screen adequately.

MR. LUNDSTROM: What side of the property would the fence be on, north or south side?

MR. TH. RETCHO: The property would be if I were at my house looking at the front door it would be on the right side of my property in the front of the property.

MR. LUNDSTROM: From the road all the way to the end of the property?

MR. TH. RETCHO: No, just enough to screen the area that's in question with the equipment.

MR. LUNDSTROM: One of the things you may want to do at the public hearing is bring a large area map.

MR. TH. RETCHO: I had photos.

MR. LUNDSTROM: Just a large thing of this so you can show the entire board.

MR. TH. RETCHO: The property right where this cuts over right in this area where the 75 is is just maybe about 60 to 80 feet in length that I would have to screen.

MS. GANN: So in looking at these photos right here why, is your property where the Xs are, that's where you want to put the fence?

MR. TH. RETCHO: Pretty much the property line runs in the woods and this is where it's there and I have one other spot.

MS. GANN: Where do you reside?

MR. TH. RETCHO: This is like in the woods off of Lakeside Drive, it's about.

MR. TE. RETCHO: 900 feet.

MR. TH. RETCHO: Well that's where I live but where this stuff is it's up over the hill, it's not visible from the road but it is visible for this particular neighbor.

MS. GANN: So this is all woods in here, correct, until you get to your residential.

MR. TH. RETCHO: In the summertime you can't see that from their vantage point with the overgrowth of trees and so forth.

MS. GANN: There is no other spot you can put these vehicles?

MR. TH. RETCHO: That was kind of a flat area, the primary areas on my father's property which is on this side and it was pretty much flat, it used to be a garden that my grandfather had years and years ago so I use that because again my property, the driveway on the one side I only have about 10 or 15 feet before the other neighbor's property and the, and the other side is grass and the front yard so to speak so that was just a good place for me to put it in there kind of tucked it all out of the way again with the exception of the neighbor that can see this.

MS. GANN: Who put the Xs on the trees?

MR. TH. RETCHO: I did all on my property.

MS. GANN: And these are the types of vehicles that

will be seen on the property.

MR. TH. RETCHO: Well, they're only really visible now in the fall and winter season and with the fence it should either eliminate the view of that or restrict it considerably.

MS. GANN: How many vehicles and how many--

MR. TH. RETCHO: They're trailers, there's that one, there's the landscape trailer which holds the equipment and I have another heavy equipment trailer I think there's about four or five altogether.

MS. GANN: How are they exiting the property?

MR. TH. RETCHO: On my driveway.

MS. GANN: Out this way?

MR. TH. RETCHO: You go out this way to get out and the driveway's like right here and that's part of my father's house, you go out there and then it goes down to the road. So basically when you come in the driveway it comes up and over, nothing's visible from the street and they're just, I just pull in, I park them, unhook and then drive down the rest of the driveway and they're pulled out once a day and put back once a day.

MR. LUNDSTROM: Madam Chairman, if I may, Thomas, how many trailers do you currently have here?

MR. TH. RETCHO: Four or five, yeah, no, five.

MR. LUNDSTROM: Currently you have five trailers parked there?

MR. TH. RETCHO: Not all in the one area because I broke them up because of the issue that I have with the

neighbor, I put a couple on my father's property then I have another area on my property that I put so what we're dealing with my father's property is even further away from where you see this trailer to the neighbor's property line is probably a good hundred and a quarter, 150 feet, the closer one where the other green trailer is this one, this one to their property line is maybe 75 feet.

MS. GANN: Is that a truck or a trailer?

MR. TH. RETCHO: It's a trailer, it's used, you mix water and grass seed and you spray to do a lawn installation.

MS. GANN: Just curious what business you're in.

MR. TH. RETCHO: Yes.

MR. LUNDSTROM: Currently you have five trailers on the property and looking to add two more?

MR. TH. RETCHO: No, actually, the reason that I brought my father and I'm seeking a variance for the two properties so that I mean I can put them all on his which would be the furthest away, I'm just trying to accommodate, you know, and try to work it out I guess for all parties, I can put them all on his, I have the room there but in terms of the variance depending on how the board wants to see it go I can put three trailers on my property and two on his and vice versa.

MR. LUNDSTROM: Now, with this variance that you're asking you're asking to increase the number of trailers by two?

MR. TH. RETCHO: No, I'm asking to allow the trailers on the property to begin with because according to the Town Code they're not allowed to be on the property.

MR. LUNDSTROM: That was going to be my next question to counsel is is this a permitted thing under the zoning?

MR. KRIEGER: Well, I was going to question further about that, yes, I see the according to the application there are two applications for interpretation of the storage and parking and use of a trailer, notwithstanding the fact that there are two on the agenda you're now saying there are five on the property.

MR. TH. RETCHO: Yes and I raise the question with the town building, the fire inspector who brought this to my attention as to the interpretation of the legal interpretation of a trailer under the code.

MR. KRIEGER: Is that, I was, that was my next question.

MR. TH. RETCHO: Under the code and I guess I have to go through the procedure to verify under the code it states that use of a trailer on the property is prohibited but it kind of is vague because it doesn't describe this particular type of equipment, it describes a trailer that would be used for construction trailer type purpose for construction site where you'd have engineers, it describes a mobile trailer where somebody might live in it if you parked a fifth wheel on the property and you were living out of it, it doesn't specifically address this type of trailer so I don't know.

MR. KRIEGER: Well, you say it says a trailer and I have, that's my first question, you're looking for a variance, says a trailer, it's actually four or five of them so second question partially asks what kind of, what is it you're looking for, interpretation the use of the word trailer. So if the Zoning Board of Appeals interprets the use of the word trailer to include those

things that are on the property, is it your intention to proceed from there to ask for a use variance?

MR. TH. RETCHO: Yes.

MR. KRIEGER: In which case you should be aware of the fact that there are very strict criteria for the granting of a use variance, this is something that's been created by the state, not by the town and it's something that, that's not been because of those strict criteria that has not been done by people without assistance of counsel skilled and knowledgeable in this particular area. The sections governing use variances are not only contained in the Town Code but also this board is limited by those contained in the state law, the Town Law of the State of New York, though if it's your intention to proceed to a use variance, that's something that it's up to you but it's something that you may want to seek the assistance of counsel on. Now the other thing because of the use variance application at least in this part it would be necessary for the board to go through the requirements of SEQRA as part of the application process. You would give them a form, right?

MS. MASON: For what?

MR. KRIEGER: Short form.

MS. MASON: He has it, he has it filled out already.

MR. KRIEGER: It will have to be completed and the board will have to go through that as well so I think that answers the question your question you asked earlier Mr. Lundstrom?

MR. LUNDSTROM: Yes.

MR. KRIEGER: And the answer to your question is yes.

MR. LUNDSTROM: Okay.

MS. MASON: So he does need a use variance?

MR. KRIEGER: Well, failing an interpretation it's the usual interpretation first and then if that interpretation doesn't proceed might as well put the use variance application in so they can all be heard at that hearing, he doesn't have to come back again and go through the whole procedure again, be done in one shot.

MR. TORPEY: How many trailers are allowed, one?

MR. KRIEGER: That's something that the building inspector will have to answer but no, the question is ultimately and the prohibition behind trailers is they don't want, framers of the code don't want people running a commercial business in a residential zone, that's what's behind it. So there aren't any requirements, there aren't any allowances as far as trailers are concerned. This applicants raised a question whether the term trailer is defined in our code.

MR. TORPEY: But like a motorcycle trailer or--

MR. KRIEGER: Yeah and I will at the time of the public hearing I will be able to further advise the board with respect to that.

MR. TH. RETCHO: So at that hearing that will be addressed first and then whether or not I would have to seek a use variance?

MR. KRIEGER: That's right, in other words, it's a twofold process, you apply for the interpretation first. If the interpretation is what you want it to be you don't need to go any further. If it's not then it allows you to proceed to a use variance right there and then at that hearing.

MR. TH. RETCHO: Okay, that's good, keep me from coming back.

MR. KRIEGER: Yeah, from having to reapply, it can all be taken care of at that time but you should be aware of the fact that as I said the state has made use variances very difficult to get.

MR. TH. RETCHO: Can I ask you this if like you had advised that to seek guidance from counsel would it be possible to wait for the interpretation before I, in other words, to hire counsel now only to find out that it is not needed at all be given the opportunity at that hearing if I need to postpone it till another hearing in order to obtain counsel for that variance would that be possible only in terms of reasonability for cost effectiveness?

MR. KRIEGER: I understand what you're saying, that will be a matter that will be up to the whether to adjourn the hearing without arriving at a decision which is basically what you're talking about basically what it amounts to is is a matter that will be up to the zoning board at the time.

MS. LOCEY: But all the legal notification--

MR. TH. RETCHO: But if I don't obtain counsel before the next meeting can I come in, if an interpretation obviously doesn't go in favor that it is allowed and I have to seek the use variance and I don't have counsel at the time and I want to proceed then I'm left to defend it on my own.

MR. KRIEGER: That's right, and that's certainly an application you could make at the time but what I'm saying to you is you should be aware in making that application that the ZBA may grant it and they may not and they may say no you're here now, let's proceed. In

many towns quite frankly they don't even bother having the preliminary hearings, they go right to a public hearing, if you're not ready, too bad. The practice here has not been as harsh but the, whether it will extend as far as what you're saying is a matter of discretion that the board will vote on.

MR. TH. RETCHO: I'm just trying to feel out in terms of the direction I should head.

MR. KRIEGER: So the answer to your question is maybe.

MS. LOCEY: Is it possible because when the legal notices go out notifying the public of the public hearing that's been scheduled it has to give a description of what that public hearing will entail and does he have the option of having a public hearing on the fence which is more or less straightforward something we see more or less routinely and the interpretation of the trailers as they're described in our code, can that be the end of the public hearing? If the public hearing goes against what he's looking for can he then make another application to the zoning board for the use variance?

MR. KRIEGER: That's what he'd have to do, yes, he can.

MS. LOCEY: He has to advertise for two public hearings but that's an option he may consider if he so chooses.

MR. TORPEY: But right now he's just here for the fence.

MR. TH. RETCHO: Well, the fence is moot basically if the trailer use is not allowed the fence is regardless I mean even if the use is allowed then the fence is still a non-issue, I'm just trying to--

MR. KRIEGER: If the fence application is granted as I said it may or may not be, don't mean to indicate one

way or the other but if it's granted there's no law that requires you to erect an eight foot fence, merely says you got permission, doesn't say that you're compelled to do it.

MR. TH. RETCHO: That part I'm just trying to ease a burden.

MR. KRIEGER: If, yes, you always have the opportunity of making an application.

MR. TH. RETCHO: I can wait and I will, I will make the application but then I have to pay the additional fees.

MR. KRIEGER: You have to go through it all over again and if you were, the other thing that you should be aware of if you have proceedings brought against you by the town, in town justice court, what happens here doesn't affect them, in other words, if the zoning board is willing to say well, okay, well, wait then maybe the town justice isn't, they have no power to bind the town justice either way, so I don't know and it's not directly relevant to the proceedings to this board whether or not there are any proceedings in town court.

MR. TH. RETCHO: Not to my knowledge.

MR. KRIEGER: Just occurs to me that it is possible and that's why I wanted to cover it. I take no position on whether there should or shouldn't be, whether there is or isn't, nothing to do with this board.

MR. LUNDSTROM: Just one other question, have you looked at other places for the trailers?

MR. TH. RETCHO: Yes, it would cost me roughly \$1,000 a month to store my equipment in an area that would be zoned commercial to store--I barely, I make enough money with the business to basically pay my taxes.

MS. GANN: One more question just for the record, what's inside one of these vehicles or trailers?

MR. TH. RETCHO: Well, that particular trailer holds water and paper mulch and grass seed but it's not stored that way, in other words, I only mix it when I'm doing a job.

MS. GANN: There's no other chemicals in any of the trailers?

MR. TH. RETCHO: No, I don't have an chemical sprayers license, I don't handle pesticides anything of any poisonous nature.

MR. KRIEGER: So for purpose of the application you should have pictures of the trailer, clear pictures of the trailers that you want the interpretation on. The pictures that the board has I would characterize as partial pictures.

MR. TH. RETCHO: Right, they weren't taken to show the equipment, they were taken to show the viewpoints.

MR. KRIEGER: I understand and just incidentally happens to include the equipment but as long as you're applying with respect to the equipment I'm sure the neighbors would want to know exactly what it is that they're looking at.

MR. LUNDSTROM: Another question that may be addressed at a public hearing would be are there any other properties within the area that have something similar to this where they're storing trailers? We don't need the names but this would probably be one of the questions that would come up so you may want to be prepared for that.

MR. TH. RETCHO: Sure, I mean, I didn't want to throw

anybody under the bus neither so if they ask, I mean, I guess I can bring a list.

MR. TORPEY: Six?

MR. TH. RETCHO: You can go more than that, there's quite a few.

MS. GANN: If there's no other questions, I'll accept a motion.

MS. LOCEY: I will offer a motion to schedule a public hearing on the application of Thomas Retcho and Terrance Retcho for their requested two lots building height for proposed eight foot fence and interpretation for storage parking and use of a trailer, an unknown number of trailers on two different section, block and lots, the first being 56-1-113.1 and the second 57-1-113.2, all at number 42 and number 40 Lakeside Drive in an R-4 zone.

MR. LUNDSTROM: I'll second that motion.

MS. MASON: You're saying that those numbers are wrong?

MR. TH. RETCHO: For the fence they're wrong, the fence is in front of the furthest most part of the house which the Town Code only allows four feet, sides and rear is six feet, front.

MR. KRIEGER: Front yard fence so it's a four foot variance that he's looking for.

MS. MASON: So I will have to change that in the motion.

MS. LOCEY: I will modify the motion to indicate four foot variance on the height of the fence.

MR. KRIEGER: And a trailer is actually five trailers.

March 12, 2007

23

MR. TH. RETCHO: Right, it was listed in the original, I don't know what you have there, I didn't specifically say one, a trailer.

MR. KRIEGER: Just a question of getting paperwork.

MR. TH. RETCHO: I just didn't want you to think I was misleading the board.

MR. LUNDSTROM: I will second the amendment.

ROLL CALL

MR. LUNDSTROM	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MS. GANN	AYE

NEWBURGH_LODGE_OF_ELKS_#247_(KIRK_WILLIAMS)_(07-08)

MS. GANN: Request for use variance for Fraternal Club/Organization not permitted in R-5 zone at 286 Temple Hill Road. Good evening, state your name, sir.

MR. WILLIAMS: Kirk Williams, Chairman of the Board of Trustees, Newburgh Elks here tonight to ask for a change of use variance to permit us to put a fraternal organization in the R-5 zone.

MR. LUNDSTROM: Joe, might be easier if you put it this way, this way the audience as well as the board can see it.

MR. MINUTA: My name is Joseph Minuta with Minuta Architecture, I'm representing the Elks Lodge number 241 for this application, 247, sorry, typo. The property is located at 286 Temple Hill Road in an R-5 zone. We're asking for a use variance on this property. It's currently being used as a single family residence that's being rented, I have some photographs what I provided in the, in your package of what currently exists at the site. We also came across some of these photos which show the actual building a little more clearly. I wanted you to have a full understanding of the area. Currently being used as single family residence as a rental property, their house has been for sale for some time, I believe it's been almost a year and they have had no buyers on the property with the exception of the Elks who would like to relocate their current lodge which they have sold and are looking for a new home in New Windsor. This area actually has a historic precedence of the Cantonment, there is a building which is currently attached to the Purple Heart Museum, the existing building was used as a Masonic Lodge throughout history so there's precedent within this area to do so. What we're also seeking this evening is to understand if this board would allow us to use the regulations based

under NC(a)(9) use which is the closest reference regulations. The reason why I request that is because this, the property is currently it's along the state route of Route 300, Temple Hill Road, its site orientation is the New Windsor Cantonment and Purple Heart Museum just north of here and there's an accessway Continental Manor which is here so here's 300, there's the access, Continental Manor and here's the current property.

MS. LOCEY: So it's right adjacent to that entryway?

MR. MINUTA: That's correct, we're providing an entranceway, we're relocating that slightly for better sight distance as well as access egress to the lot. This will actually have a two phased approach to it, we have been told Phase 1 is going to consist of providing an addition to the existing building, there's our existing plan, here's the new plan showing existing building, we're going to put a new front entrance which will be handicapped accessible, the bulk of the existing basement level and the first level, we're providing parking per the regulations that we have referenced from the NC(a)(9) use, we also meet the regulations as far as setbacks are required. However, we may be coming to you in conjunction with this application for an existing non-conformance for the front yard. We have done some research with respect to the property lines as far as it relates to New York State DOT property, they're the adjoiner, there's been some tags of the property line and I have Darren Stridiron here this evening, should you have any questions with regard to that, he's the New York State professional land surveyor for the project, we have gone back as far as, Darren?

MR. STRIDIRON: 1942.

MR. MINUTA: 1942, there was property line which was situated approximately 6.7 feet from this corner of the

building, our deed shows 36.6 which would put us as an existing non-conformance for the front yard and again I'm basing our regulations off of the NC(a)(9) use showing 40 foot front yard, 15 foot side yard, 15 foot rear yard and for both side yards 35. That's the property in Phase 1. Phase 2 of the property would be to provide an outdoor pavilion which is approximately 1,400 square feet and an expansion area for parking at this location and that would not be an asphalt parking lot rather that would be a geotech style type structure that would be placed on the ground that would allow the grass to grow through and so forth and that would be used for overflow events for the pavilion, also dovetails nicely in the parking situation currently seen at the Museum for the Purple Heart and with respect to that, the Elks are historically enshrined in American culture as far as their lodge and they also have a great connection with the Purple Heart veterans and VFW, so it's a very good match as far as the location and sighting and also brings a new organization, fraternal organization that does a lot of public work for free to New Windsor.

MS. LOCEY: Where is the lodge currently?

MR. WILLIAMS: We're at 155 Liberty Street in the City of Newburgh.

MR. MINUTA: They have been there for how long?

MR. WILLIAMS: Since 1909.

MR. MINUTA: So they're a long standing order.

MR. LUNDSTROM: If I may, what was the purpose for selling the old building?

MR. WILLIAMS: Several reasons, one of the primary reasons was the lack of participation because of frankly the neighborhood, people had the connotation

that it was not the best area that we could be in and we had a buyer that was interested in it that would maintain the building in the way we wanted it maintained if we left it and we came to a very good business deal with them and we decided to sell it to them.

MR. LUNDSTROM: Does the new facility give you more floor space than the old facility?

MR. WILLIAMS: No, no this is approximately 1/3 of the floor space we have.

MR. MINUTA: If I may add to that the old facility was constructed, they had a very large membership at the time, the membership from that has since has gone down, the hope is to establish this in New Windsor and to increase their membership of course. The other building also being built in the 1930's I believe does not conform to today's standards of energy as you can imagine the building that they were in was very, very large and thermal compliance things of that nature was very expensive for them to run as a smaller order with the dues and fees that they had.

MR. WILLIAMS: Our heating bill was 150 to \$200 a day in the winter for our current size organization, didn't warrant that size facility, we needed a lot of maintenance and again we decided to sell.

MS. LOCEY: Now there are two single family homes just north of this location and Continental Manor just south, I'm a little bit concerned with the lighting that might interfere with the comfort of the residential areas, what is going to be done to mitigate those things?

MR. MINUTA: We're proposing a fence around this portion of the property for the first phase of this and we would also be proposing lighting within the parking

area which would be zero clearance, zero cutoff, there will be no glare from the adjoining neighbors so with regard to the hall here I don't anticipate any noise.

MS. LOCEY: Are outdoor parties being planned for the gazebo type area? Didn't you indicate there'd be something?

MR. MINUTA: An outdoor pavilion and perhaps some obviously within the better weather as far as being able to hold outdoor functions I would assume that those type things would happen that would be at the discretion of your board as well since it is a use variance you basically have say over how the property can be utilized.

MR. KRIEGER: Okay, a couple of things, first of all, with respect to the application of particular requirements in a particular zone because you're looking for a use variance this application stands on its own, if the variance is granted, it will be according to whatever is proposed. Now it may be you may choose to make it may be an effective argument to argue that they comply with this set of criteria but ultimately the criteria that will be used for this building will be those that you present, it's a stand-alone type deal, that's number 1. Number 2, is this as a point of information is this subject to planning board approval if a variance should be granted?

MR. MINUTA: At this point, we would most likely go to the planning board but we need the zoning variance.

MR. KRIEGER: First, I said if it were granted, I understand no further proceedings--

MR. MINUTA: It's my understanding that it would.

MR. KRIEGER: Lastly to reiterate what I said to the

last applicant about use variances, the state, not the town, the state has made, has set the bar fairly high as far as that's concerned and this board is bound by the state requirements regardless of whether they think a particular application is a good idea or not, they're bound by these requirements and they're contained in Section 267 of the Town Law of the State of New York and you should be prepared to address those criteria after the application cause as I say it's not a matter of the board looking at it and saying whether it's a good idea or good for the town or whatever, they're bound by those criteria that the state has set forth, they have no choice, it has no choice so be repaired to meet that hurdle.

MR. MINUTA: We have set forth the application, we have completed short form EAF and that completes the requirement for the statute.

MR. KRIEGER: At the public hearing you're going to have to address the criteria, that is just a cautionary note so that you're ready when it comes time.

MR. LUNDSTROM: Madam Chairwoman, if I may ask another question of counsel, again, like the previous application should the applicant be encouraged to seek counsel to represent them also at this public hearing?

MR. KRIEGER: It's a use variance, yes, and the answer is yes for all the reasons that I said for the last application, ever since the state has enacted those regulations it's a different ballgame.

MR. MINUTA: With regard to the regulations of the state, it's still the jurisdiction of this board that we comply with those, does that need to go to another board or state level?

MR. KRIEGER: No, no, it's just that this board has to use those standards in arriving at its conclusion, it

doesn't require anybody, the decision is still made here in front by this board, those are just the standards that they have to use.

MS. LOCEY: Those standards I have to assume that the Elks Lodge is applying for this use variance as a contract vendee, they don't currently own this property, is that correct?

MR. MINUTA: The property is currently pending sale upon use variance.

MS. LOCEY: But a lot of that criteria for a use variance is the owner's burden, is it not?

MR. KRIEGER: Yes, except it's a burden that has to be met, what they're going to have to do is they're going to have to get because it's owned by somebody else contract notwithstanding they'll have to get a proxy which I assume--

MR. MINUTA: We've got it.

MR. KRIEGER: I assume that's not going to be a difficulty. With respect to meeting the standards, it's their application, somebody has to meet them, the proxy says they're standing in the shadow as the owners, matter of fact, the owner's bound by it, if this fails for any reason and the owner wants to come in and look for a use variance for an ABC organization might be out of luck because for six months anyway the proxy says you can speak for the owner.

MR. WILLIAMS: Frankly, he can't sell the property, it's a very difficult property to sell, not the best location in the world for its current use.

MR. KRIEGER: That certainly would play into--

MR. MINUTA: Plays into the hardship.

MR. KRIEGER: Into meeting the criteria because that's certainly one of them.

MR. MINUTA: We'd like to have a public hearing obviously as soon as possible and with respect to that I'd just like to know that we're, whether what we're proposing as far as using similar regulations to the NC zone which borders this for use as fraternal order because that particular zone has regulations for fraternal orders, that's why we provided them for this application. We felt it would be in keeping with those requirements and would be an easy point to bring up that we could all speak about and have a common understanding so I, my question is, would that be permissible of this board at this time and is that something that they could answer?

MR. KRIEGER: You understand legally as I said the application is basically a stand-alone application, I assume when you present it you're going to say it complies with the nearest available similar regulations, those being the NC zone and this is how it applies and so forth and that's going to be part of your argument and I'm sure you'll make it part of your argument. But as opposed to we just made it up, it certainly would reflect positively on you but you should be aware that the application is going to be granted based on this application so if, where it becomes a problem is if you go let's assume that you're granted the application that you have asked for and you go to the planning board if they make substantial changes, not minor changes but substantial changes that's a problem because you've got a variance that says the zoning board will approve this.

MR. MINUTA: Agreed.

MR. KRIEGER: If this turns out to be that, you know, it may be a problem so I can do no more than highlight

the problem, I can't suggest a solution but theoretically I guess the solution is that the planning board says we'll only grant that application, we only have to come back and so what about that so when you decide what this is you should have a firm idea of what you want to do.

MR. MINUTA: Thank you.

MR. LUNDSTROM: If I may ask the applicant and the architect, do you feel that you're ready to proceed and would like to proceed to a public hearing?

MR. MINUTA: Yes, we do.

MR. LUNDSTROM: Then with that in mind, I will make a motion that this application be allowed to proceed to a public hearing for application of Newburgh Lodge of Elks corrected number is 247.

MR. WILLIAMS: Yes.

MR. LUNDSTROM: Application number 07-08 request for use variance for fraternal club/organization not permitted in an R-5 zone at 286 Temple Hill Road, Section, Block and Lot 32-1-65.

MR. TORPEY: I'll second that.

ROLL CALL

MR. LUNDSTROM	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MS. GANN	AYE

PUBLIC_HEARINGS:

YURY_MATSUKA_(07-01)

MS. GANN: Public hearing Yury Matsuka. Before I begin this public hearing, I'm sorry, sir, is there anybody here for this public hearing? There's no one here, okay.

MR. MATSUKA: I'm Yury Matsuka and I'm here for variance to permit construction of rear deck at 2648 Liberty Ridge, New Windsor, New York and that's my place of residence.

MS. GANN: So I'm going to ask you a couple questions that might sound a little silly but we need to ask them. Will you be taking any substantial vegetation down in the building of the deck?

MR. MATSUKA: No.

MS. GANN: Building over any easements?

MR. MATSUKA: No.

MS. GANN: Create any water hazards in the building of the deck?

MR. MATSUKA: No.

MS. GANN: Did you start this already, did you start digging and putting footings?

MR. MATSUKA: No, they didn't start anything.

MS. GANN: This is your property right here?

MR. MATSUKA: Yes, that's my property and this property, different views.

MS. GANN: Any other questions from the board?

MS. LOCEY: Do other homes in your neighborhood have similar size decks?

MR. MATSUKA: Some of my neighbors have bigger, larger decks.

MS. LOCEY: So it would fit into the contour of the character of the neighborhood?

MR. MATSUKA: Yes.

MS. GANN: I'd like to open up the public portion of this meeting and being as there's no one here for this meeting, I'm going to close the public portion and ask Myra how many mailings we had.

MS. MASON: On February 23, I mailed out 99 notices and had no responses.

MS. GANN: Other questions from the board? I'll accept a motion.

MS. LOCEY: I will offer a motion to grant the requested 10 foot rear yard setback on the application of Yury Matsuka for a proposed 12 x 17 rear deck at 2648 Liberty Ridge in an R-3 zone.

MR. TORPEY: I will second that.

ROLL CALL

MR. LUNDSTROM	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MS. GANN	AYE

MR. MATSUKA: Thank you.

March 12, 2007

35

MS. GANN: Motion to adjourn?

MR. LUNDSTROM: So moved.

MR. TORPEY: Second it.

ROLL CALL

MR. LUNDSTROM	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MS. GANN	AYE

Respectfully Submitted By:

Frances Roth
Stenographer